

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by March 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-5702 Filed 3-8-95; 8:45 am]

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[Release No. 34-35438; File No. SR-NASD-95-01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Subscriber Fees For Non-NASD Members Receiving the Nasdaq Workstation™ II Functionality

March 2, 1995.

On January 9, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ a proposed rule change to extend to non-NASD members (e.g., institutional investors) receiving the second generation of Nasdaq Workstation™ functionality ("NWII") the same subscriber fees that members must now pay. The Commission published notice of the proposed rule change in the **Federal Register** on February 2, 1995.² No comments were received in response to the notice. For the reason discussed below, the Commission is approving the proposed rule change.

I. The Terms of Substance of the Proposed Rule Change

On December 14, 1994, the NASD submitted a proposed rule change—File

No. SR-NASD-94-76—to the Commission that established a new fee schedule for NASD member firms receiving the second generation of NWII.³ The fee schedule contained in File No. SR-NASD-94-76 became effective upon receipt by the SEC in accordance with Section 19(b)(3)(A)(ii) of the Act and Rule 19b-4(a) thereunder.⁴ As specified in File No. SR-NASD-94-76, the new subscriber fees for NWII will add to Sections A(9) and E(5) of Part VIII of Schedule D to the NASD By-Laws.

The NASD then filed the instant rule change to extend to non-NASD members (e.g., institutional investors) receiving NWII functionality the same subscriber fees that members must now pay: (a) a service charge of \$100/month per server; (b) a display charge of \$500/month per presentation device; and (c) a charge of \$1,150/month for additional circuits. This rule change does not, however, entail any further modification to the fee schedule language for NWII that was set forth in File No. SR-NASD-94-76.

The sole purpose of this rule change is to extend to non-NASD members receiving the NWII, the same fees that now apply to NASD members that subscribe to the NWII. Currently, non-NASD members can access Level 2 Nasdaq Workstation service by subscription to the original version of the Nasdaq Workstation service ("NWI"). The NASD, however, is in the process of replacing NWI with NWII.⁵ As the NWII roll-out proceeds, it will completely replace the existing NWI for all classes of subscribers. The instant rule change will ensure that the same NWII charges are paid by all subscribers, including those that are not members of the NASD.

II. Commission Findings

The Commission believes that the rule change is consistent with the requirements of Section 15A(b)(5) of the Act. Section 15A(b)(5) specifies that the rules of a national securities association shall provide for the equitable allocation of reasonable dues, fees, and other changes among members, issuers, and other persons using any facility or system that the Association operates or

controls. This rule provides that the newly established fees for members receiving the NWII functionality will also be paid by non-member subscribers receiving the NWII.⁶ This, in turn, effectuates fairness in the recovery of the applicable costs from the entire subscriber base. As described in this notice, NWII is being implemented in phases with all current NWI subscribers in a defined area being converted to NWII. Also non-NASD members that are converted to NWII will be liable for the new fees; NWI subscribers (i.e., members and non-members) will continue to pay the NWI service fees until they are converted. The extension of the new NWII fees schedule to non-members will result in the imposition of uniform fees and an equitable allocation of operating costs among all subscribers receiving the NWII functionality.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR-NASD-95-01 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-5701 Filed 3-8-95; 8:45 am]

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[Release No. 34-35435 File No. SR-NASD-94-61]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Filing Requirements Under Article III, Section 44 of the NASD Rules of Fair Practice Regarding Modified Guaranteed Annuity Contracts and Modified Guaranteed Life Insurance Contracts

March 2, 1995.

On January 12, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change² that amends

⁶ NWI and NWII both permit the delivery of either Level 2 or Level 3 Nasdaq service. Subscription to Level 3 is limited to NASD members that meet the financial and operational requirements for market making. Subscription to Level 2 Nasdaq service is open to non-members as well as members because it does not provide the functionality needed to enter quotations as a market maker.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The NASD originally submitted the proposed rule change on November 21, 1994. On December 1, 1994 and January 12, 1995, the NASD filed amendments to its filing.

² 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 35284 (January 27, 1995), 60 FR 6582.

³ The computer facilities that support the provision of NWII are operated by the Nasdaq Stock Market, Inc. ("NSMI"), a wholly-owned subsidiary of the NASD.

⁴ See Release No. 34-35189 (January 3, 1995), 60 FR 3014 (January 12, 1995).

⁵ The NWII roll-out will occur in five phases with the final phase scheduled for completion in mid-1996. Each phase consists of installing NWII at all subscriber sites in a defined geographic area. Thus, while the roll-out proceeds, some subscribers will continue to utilize NWI and will pay the existing charges for that service.

Subsection 44(b)(8) to Article III of the NASD Rules of Fair Practice ("Corporate Financing Rule"). The Commission published notice of the proposed rule change in the **Federal Register** on January 30, 1995.³ For the reasons discussed below the Commission is approving the proposed rule change.

I. The Terms of Substance of the Proposed Rule Change

The rule change amends Subsection 44(b)(8) of the Corporate Financing Rule to exempt modified guaranteed annuity contracts and modified guaranteed life insurance contracts (collectively, "Contracts") from the filing requirements under Subsection 44(b). The Corporate Financing Rule requires members to file with the NASD documents and information relating to a public offering of securities for review of the fairness of underwriting compensation and arrangements. The filing requirements in the Corporate Financing Rule also apply to Schedule E of the NASD By-Laws and Article III, Section 34 of the NASD Rules of Fair Practice.⁴ The Corporate Financing Rule filing requirements apply to public offerings of debt, equity and public limited partnership securities, and provide that certain offerings of securities shall be exempt from the filing requirement under Subsection 44(b)(8) of the Rule. The exemptions in Subsection 44(b)(8) include, among others, open-end investment company securities registered under the Investment Company Act of 1940 (except closed-end investment company securities) and variable contracts. In addition, the exemptions include securities defined as "exempt securities" under Section 3(a)(12) of the Act and securities exempt from registration with the SEC pursuant to Sections 4(1), 4(2) and 4(6) of the Securities Act of 1933 ("1933 Act") and Rules 504 (unless considered a public offering), 505 and 506 adopted under the 1933 Act.

The Contracts did not fall within any of the exemptions contained in the Corporate Financing Rule filing requirements. The Contracts are similar to variable annuity contracts in that they are issued by an insurance company, offered on a continuous basis, subject to

the registration requirements and regulatory scheme of state insurance law, and, shift investment risk to the contract owner by offering variable, non-guaranteed rates of return under certain circumstances. That is, the Contracts are subject to a market value adjustment upon a Contract surrender or partial withdrawal prior to the end of a guarantee period. However, unlike variable annuities, the individual account values of the Contracts do not reflect the investment experience of one or more separate accounts registered under the Investment Company Act of 1940. Instead, like traditional fixed annuities, the Contracts are backed by the general account assets of the insurance issuer and are registered only as insurance contracts under state insurance law.

The review of the fairness and reasonableness of underwriting terms and arrangements is the central requirement of the Corporate Financing Rule. The issuance and sale of the Contracts on an open-ended basis does not raise the kinds of underwriting issues with which the Corporate Financing Rule is primarily and traditionally concerned. The structures of the instruments are that of insurance products which traditionally have been regulated under state insurance law and the terms of the Corporate Financing Rule were not developed to address such products. The Commission is therefore approving the NASD's proposal to amend the Corporate Financing Rule by adopting as new Subsection 44(b)(8)(E) an exemption from the filing and other requirements of the Corporate Financing Rule for the Contracts and to reletter the remaining sections accordingly. The amended rule thus exempts such Contracts from the filing and review requirements of the Corporate Financing Rule.⁵ Listed below is the text of the rule change approved by the Commission. New language is italicized; proposed deletions are in brackets.

The Corporate Financing Rule Underwriting Terms and Arrangements

Sec. 44

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(b) Filing Requirements

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(8) Exempt Offerings

Notwithstanding the provisions of paragraph (1) above, the following offerings are exempt from this Section, Schedule E to the By-Laws, and Article III, Section 34 of the Rules of Fair Practice. Documents and information relating to the following offerings need not be filed for review:

(A) securities exempt from registration with the Securities and Exchange Commission pursuant to the provisions of Sections 4(1), 4(2) or 4(6) of the Securities Act of 1933, as amended, or pursuant to Rule 504 (unless considered a public offering in the states where offered), Rule 505 or Rule 506 adopted under the Securities Act of 1933, as amended;

(B) securities which are defined as "exempt securities" in Section 3(a)(12) of the Securities Exchange Act of 1934, as amended;

(C) securities of investment companies registered under the Investment Company Act of 1940, as amended, except securities of a management company defined as a "closed-end company" in Section 5(a)(2) of that Act;

(D) variable contracts as defined in Article III, Section 29(b)(1) of the Rules of Fair Practice;

(E) *modified guaranteed annuity contracts and modified guaranteed life insurance policies, which are deferred annuity contracts or life insurance policies the values of which are guaranteed if held for specified periods, and the nonforfeiture values of which are based upon a market-value adjustment formula for withdrawals made before the end of any specific period;*

[(E)](F) offerings of municipal securities as defined in Section 3(a)(29) of the Securities Exchange Act of 1934, as amended;

[(F)](G) tender offers made pursuant to Regulation 14D adopted under the Securities Exchange Act of 1934, as amended; and

[(G)](H) securities issued pursuant to a competitively bid underwriting arrangement meeting the requirements of the Public Utility Holding Company Act of 1935, as amended.

II. Commission Findings

The Commission believes that the rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ which require that the rules of the Association promote just and equitable principles of

³ Securities Exchange Act Release No. 35266 (January 23, 1995), 60 FR 5744.

⁴ Under Subsection 44(b)(1) of the NASD Rules of Fair Practice "[n]o member or person associated with a member shall participate in any manner in any public offering of securities subject to this Section, Schedule E to the By Laws, or Article III, Section 34 of the Rules of Fair Practice unless documents and information as specified herein relating to the offering have been filed and reviewed by the NASD." (Emphasis added).

⁵ In addition, Article III, Sections 26 and 29 of the NASD Rules of Fair Practice are not applicable, since the Contracts are not within the definition of "variable contract" and do not include a separate account registered under the Investment Company Act of 1940. However, as securities, sales of the Contracts are subject to other applicable Rules of Fair Practice when sold by associated persons of a member and the rules and regulations of the Commission, particularly the antifraud provisions thereof.

⁶ 15 U.S.C. Sec. 78o-3.

trade and protect investors and the public interest since the issuance and sale of the Contracts on an open-ended basis does not raise the kinds of underwriting issues with which the Corporate Financing Rule is primarily and traditionally concerned; the structures of the instrument are that of insurance products which traditionally have been regulated under state insurance law; the terms of the Corporate Financing Rule were not developed to address such products.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-94-61 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-5705 Filed 3-8-95; 8:45 am]

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[Release No. 34-35439; File No. SR-NYSE-94-38]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendment to Exchange Rule 104.13

March 2, 1995.

On October 26, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Rule 104.13 regarding investment account transactions of specialists and related parties.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35019 (November 29, 1994), 59 FR 62762 (December 5, 1994). No comments were received on the proposal.

Rule 104 provides that a specialist may not effect any purchase or sale of a security in which the specialist is registered ("specialty stocks") for the account of an approved person associated with the specialist's organization, unless such transaction is reasonably necessary to permit the specialist to maintain fair and orderly markets. Currently, NYSE Rule 104.13 requires that transactions in specialty stocks for the accounts of specified

persons affiliated with or related to a specialist must be for investment purposes and executed in accordance with certain restrictions relating to the price at which transactions may take place ("tick" restrictions).³ The rule applies to the accounts of employees or parties active in the business of a specialist or persons active in the specialist business, and any approved person (individual or entity in a control relationship) of the specialist, other than an approved person entitled to an exemption under NYSE Rule 98.⁴

The Rule change expands the restrictions contained in NYSE Rule 104.13 to transactions in specialty stocks effected "for the benefit of" the specified parties. This rule change will apply the Rule 104.13 restrictions to transactions that, although not effected directly for the "account" of a specified party, are effected for an account in which a specified party has a beneficial interest.

The rule change also extends to affiliated persons the Rule 104.13 restriction against specialists' originating orders in specialty stocks for any accounts over which they exercise investment discretion.⁵ In addition, the rule change specifies that the restrictions in Rule 104.13 apply to transactions effected for trust accounts that benefit the specialist or affiliated persons.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission believes that the rule change is consistent with Section 11(a) of the Act⁶ which generally makes it unlawful, with certain exceptions, for any member of a national securities exchange to effect a transaction on such exchange for his own account, the account of an associated person, or an account with respect to which it or an associated

person thereof exercises investment discretion. The Commission also believes that the rule change is consistent with Section 6(b)(5) of the Act⁷ which requires that the rules of an exchange be designed to promote just and equitable principles of trade to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that extending the restrictions on transactions in specialty stocks to those effected "for the benefit of" affiliated parties in appropriate and consistent with prohibiting or restricting certain interested transaction that may involve potential conflicts of interest. The rule change is designed to ensure that affiliated persons will not be permitted to effect transactions in specialty stocks, whether or not they use accounts in their own names, outside of the restrictions contained in NYSE Rule 104.13. The Commission believes that the rule change will further the purpose of the NYSE Rule and will prevent affiliated persons from avoiding the Rule 104.13 restrictions.

The Commission further believes that the rule change to extend to affiliated persons the Rule 104.13 restrictions against specialists' originating orders in specialty stocks for any accounts over which they exercise investment discretion is consistent with Sections 6 and 11(a) of the Act.⁸ The Commission believes that the rule change is an appropriate limitation on specialists' and affiliated persons' trading and is designed to prevent fraudulent and manipulative actions. In addition, the Commission believes that it is appropriate to specify in the rule that the restrictions in Rule 104.13 apply to transactions effected for trust accounts that benefit the specialist or affiliated persons.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSE-94-38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-5703 Filed 3-8-95; 8:45 am]

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⁷ 15 U.S.C. 78f(b)(1988).

⁸ The Commission approved the Rule 104.13(d) restriction against specialists originating orders in specialty stocks for any account over which they may have investment discretion in Securities Exchange Act Release No. 34231 (June 17, 1994), 59 FR 32722 (June 24, 1994).

⁹ 15 U.S.C. 78s(b)(2) (1988).

¹⁰ 17 CFR 200.30-3(A)(12) (1994).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ The tick restrictions provide that acquisitions may only be made at prices below the last different price—on "minus" or "zero minus" ticks, and liquidations may only be made at prices above the last different price—on "plus" or "zero plus" ticks. See NYSE Rule 104.13(b).

⁴ NYSE Rule 98 and its Guidelines provide exemptions from various NYSE rules affecting approved persons affiliated with specialist, including Rule 104.13. The exemptions are predicated on the existence of procedures to achieve a functional separation between the specialist organization and the approved person. The rule change amends the reference to Rule 104.13 in Rule 98 so that it reflects the changes to Rule 104.13 being approved herein.

⁵ Currently, the restriction states that specialists should not originate orders in specialty stocks for any accounts over which they may have discretion.

⁶ 15 U.S.C. 78k(a)(1988).